

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JAMES EDWARD THOMAS,

No. C 08-01778 SBA (PR)

12 Petitioner,

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**13 v.
14 JAMES WALKER, Warden,

15 Respondent.

16 /

17 Petitioner has requested appointment of counsel in this action.

18 The Sixth Amendment right to counsel does not apply in habeas corpus actions. See
19 Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B),
20 however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the
21 court determines that the interests of justice so require" and such person is financially unable to
22 obtain representation. The decision to appoint counsel is within the discretion of the district court.
23 See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v.
24 Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the
25 exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and
26 complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or
27 mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either
28 in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial
facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas

1 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
2 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent
3 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
4 Cir. 1965).

5 At this early stage of the proceedings the Court is unable to determine whether the
6 appointment of counsel is mandated for Petitioner. The Court notes that Petitioner has presented his
7 claims adequately in the petition, and no evidentiary hearing appears necessary. Accordingly, the
8 interests of justice do not require appointment of counsel at this time, and Petitioner's request is
9 DENIED. This denial is without prejudice to the Court's sua sponte reconsideration should the
10 Court find an evidentiary hearing necessary following consideration of the merits of Petitioner's
11 claims.

12 This Order terminates Docket no. 4.

13 IT IS SO ORDERED.

14 Dated: 6/18/08



SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF CALIFORNIA

5 JAMES EDWARD THOMAS,

6 Plaintiff,

7 v.

8 THE WARDEN, CSP., STATE OF
9 CALIFORNIA et al,

10 Defendant.
11 _____ /

Case Number: CV08-01778 SBA

12 **CERTIFICATE OF SERVICE**

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
14 Court, Northern District of California.

15 That on June 18, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
17 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
18 in the Clerk's office.

19 James Edward Thomas F-21197
20 California State Prison - Sacramento/Folsom
21 P.O. Box 290066
22 Represa, CA 95670-0066

23 Dated: June 18, 2008

24 Richard W. Wiking, Clerk
25 By: LISA R CLARK, Deputy Clerk